



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2005-6]

Statutory Cable, Satellite, and DART License Reporting Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office (“Office”) is seeking comment on proposed rules governing the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements. With this Notice of Proposed Rulemaking, the Office intends to resolve issues raised in an earlier Notice of Inquiry directed towards cable reporting practices,¹ as well as address additional issues that have subsequently arisen. Further, to the extent this rulemaking proposes changes to the Office’s section 111 regulations governing the processing of refunds, supplemental or amended payments, or calculation of interest, as well as case management procedures, the Office proposes similar changes with regard to the regulations governing the statutory licenses for satellite carriers and digital audio recording devices or media.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

¹ 71 FR 45749 (Aug. 10, 2006).

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://copyright.gov/rulemaking/section111>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at sdam@loc.gov, Regan A. Smith, Deputy General Counsel, by email at resm@loc.gov, or Anna Chauvet, Assistant General Counsel, by email at achau@loc.gov, or any of them by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act (“Act”), title 17 of the United States Code, provides cable operators with a statutory license to retransmit a performance or display of a work embodied in a “primary transmission” made by a television station licensed by the Federal Communications Commission (“FCC”). Cable operators that retransmit broadcast signals in accordance with this provision are required to pay royalty fees to the Copyright Office (“Office”), among other requirements. Payments made under section 111 are remitted semi-annually to the Office, which invests the royalties in United States Treasury securities pending distribution of these funds to copyright owners eligible to

receive a share of the royalties.² In conjunction with royalty payments, cable operators must also complete and file statements of account (“SOAs”), which provide a record regarding the cable operators’ retransmissions and royalty payments to “promote uniform and accurate reporting, assist cable operators in meeting their obligations under the Act and regulations, and aid copyright owners, the Copyright Office, and the Copyright [Royalty Judges] in reviewing and using the information provided.”³ Information provided on SOAs includes, among other things, the number of channels on which the cable system made secondary transmissions, the number of subscribers to the cable system, and the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions.⁴ Cable operators file the SOAs with the Office using an appropriate form provided by the Office.⁵

In 2005, the Motion Picture Association of America, Inc. (“MPAA”), on behalf of its member companies and other producers and/or distributors of movies and television series (hereinafter, “Program Suppliers”), filed a petition for rulemaking with the Copyright Office requesting the commencement of a proceeding to address several issues related to the SOA reporting practices of cable operators under section 111 (the “Petition”). The Petition asked the Office to adopt a number of changes to its section 111 regulations and SOAs to “improve the nature of the information reported on the SOAs by cable operators,” believing them to be “critical to efficient and effective compliance

² The Office distributes those royalties in accordance with periodic distribution orders entered by the Copyright Royalty Board.

³ 42 FR 61051, 61054 (Dec. 1, 1977) (explaining benefits of using a standard SOA form, referencing the Copyright Royalty Tribunal, a precursor to the current Copyright Royalty Judges system).

⁴ 37 CFR 201.17(e)(5)–(7).

⁵ *Id.* 201.17(d). The SOA forms are available in PDF and Excel format on the Office’s website at https://www.copyright.gov/licensing/sec_111.html.

review” of SOAs by copyright owners.⁶ The Office published a notice of inquiry (“NOI”) seeking comment on Program Suppliers’ proposals and recommendations,⁷ and multiple parties filed comments in response to the NOI, as well as reply comments.⁸

Since the Office issued that NOI, the Satellite Television Extension and Localism Act of 2010 (“STELA”) and STELA Reauthorization Act of 2014 (“STELARA”) updated section 111 in several respects.⁹ Among other things, STELA modified the calculation of royalty rates paid by cable operators, and updated certain provisions to accommodate the transition to digital television broadcasts.¹⁰ In addition, pursuant to STELA, the Copyright Office issued a regulation implementing a confidential procedure under which a qualified independent auditor working on behalf of all copyright owners can “confirm the correctness of the calculations and royalty payments reported” on a cable SOA filed for accounting periods commencing on or after January 1, 2010.¹¹ STELARA, in turn, amended section 111 to expand the local service area of low power television stations.¹²

This notice of proposed rulemaking (“NPRM”) addresses issues raised in response to the NOI that are still relevant, and notes where intervening statutory and/or regulatory changes may have mooted some issues. This NPRM also proposes revisions to

⁶ Program Suppliers, Petition for Rulemaking 2 (June 7, 2005) (“Petition”).

⁷ 71 FR 45749.

⁸ The initial and reply comments have been posted on the Office’s website at <https://copyright.gov/rulemaking/section111>.

⁹ See Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218 (2010) (“STELA”); STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014) (“STELARA”).

¹⁰ 17 U.S.C. 111(d)(1)(B)–(F), (f)(4); *see generally* 75 FR 56868 (Sept. 17, 2010) (interim rule implementing STELA).

¹¹ 17 U.S.C. 111(d)(6); 37 CFR 201.16(h), (l), (o).

¹² 17 U.S.C. 111(f)(5).

SOA forms and/or the Office’s regulations that are intended to streamline administration of SOAs by the Office’s Licensing Division, some of which would also apply to remitters making use of the section 119 (satellite) or chapter 10 (“DART”) licenses.

The Office welcomes public input on the following proposed changes, as well as other suggestions on streamlining or otherwise improving reporting practices for the section 111 license.

II. Proposed Section 111-Specific Changes

A. Relationship Between Gross Receipts (Space K) and Subscriber and Rate Information (Space E)

Section 111 requires cable operators to report, in public filings to the Copyright Office, a variety of information regarding the secondary transmissions licensed under the statute, including the number of channels by which the system made secondary transmissions, the names and locations of all primary transmitters used, and, as particularly relevant here, the “total number of [cable system] subscribers” and the “gross amounts” paid to the cable system by these subscribers “for the basic service of providing secondary transmissions of primary broadcast transmitters.”¹³ Cable operators pay a percentage from these reported gross receipts “for the privilege” of providing such secondary transmissions (that is, a base rate), and additional amounts for any distant signal equivalent (“DSEs”) carried by the cable system. These amounts in turn are distributed as royalty fees to copyright owners whose works have been broadcast pursuant to the statutory license.¹⁴ The statute further provides that copyright owners may conduct confidential audits to verify the information provided on the SOAs, including the

¹³ 17 U.S.C. 111(d)(1)(A).

¹⁴ *Id.* 111(d)(1)(B)(i)–(iv).

number of subscribers and relevant subscription rates, as well as the total amount of gross receipts collected from these subscribers at the reported rates, to ensure that they have received accurate compensation under the statutory license.¹⁵

In accordance with this statutory design, the Copyright Office has implemented these requirements through its regulations¹⁶ and SOA forms. The Office addressed the statutory requirements to report the “number of subscribers” and “gross amounts” paid to cable operators as part of its initial regulations implementing section 111. In a notice of proposed rulemaking, the Office noted that reporting “[t]he ‘number of subscribers’ alone will serve no real purpose.”¹⁷ Instead, the Office concluded that the statutory requirement was “intended to provide copyright owners with a basis for a comparison with the reported gross receipts.”¹⁸ Accordingly, the Office “proposed . . . that the number of subscribers be accompanied by certain related information concerning subscriber categories and charges in order reasonably to accomplish this purpose.”¹⁹ In a subsequent final rule adopting regulatory language almost identical to the present section 201.17(e)(6), the Office noted that “although this information ‘will not provide a definitive or detailed comparison with the reported gross receipts,’ it will be useful for at least a rough comparison with the reported gross receipts, and gives meaning to the statutory requirement that the ‘number of subscribers’ be given.”²⁰

To facilitate this “rough comparison with the reported gross receipts,” under section 201.17(e)(6) cable operators must provide “[a] brief description of each

¹⁵ *Id.* 111(d)(6).

¹⁶ 37 CFR 201.17(e)(6)–(7).

¹⁷ 42 FR at 61054.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 43 FR 958, 959 (Jan. 5, 1978).

subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters”; “[t]he number of subscribers to the cable system in each such subscriber category”; and “[t]he charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions.”²¹ These regulatory requirements are reflected in Space E of the SOA forms (titled “Secondary Transmission Service: Subscribers and Rates”), which requests information that “should cover all categories of secondary transmission service of the cable system,” including “the number of subscribers to the cable system, broken down by categories of secondary transmission service,” and the “rate charged for each category of service.”²² Section 201.17(e)(7) of the Office’s regulation addresses the statutory reference to “gross amounts” and is reflected in Space K (titled “Gross Receipts”), which requires cable operators to “[e]nter the total of all amounts (gross receipts) paid to [the] cable system by subscribers for the system’s secondary transmission service (as identified in Space E) during the accounting period.”²³

Many of the issues raised by Program Suppliers’ Petition address whether the subscriber and rate information provided by cable operators under the Office’s current regulations is sufficient to provide the copyright owner with the intended “rough comparison” with the required gross receipts information, a concern the Office understands remains germane as the cable marketplace continues to evolve since the regulation was first promulgated. Program Suppliers stated that SOAs do not “require

²¹ 37 CFR 201.17(e)(6)(i)–(iii).

²² Paper Form SA1-2 at 2, Space E (“Short Form SOA”); Paper Form SA3 at 2, Space E (“Long Form SOA”).

²³ Short Form SOA at 6, Space K; Long Form SOA at 7, Space K; *see also* 37 CFR 201.17(e)(6)–(7) (describing corresponding SOA requirements).

adequate information for a meaningful comparison between Space E and Space K,”²⁴ and requested the Office to “require greater congruity between the ‘gross receipts’ information and the subscriber and rate information provided on the SOAs,” and “greater detail concerning the nature of revenues that a cable operator includes and excludes in its ‘gross receipts.’”²⁵ As explained below, while the Office tentatively concludes that it is not advisable to adopt all of the Program Suppliers’ recommendations, the Office proposes some changes to the information sought in Space E to better facilitate the ability of copyright owners to verify gross receipts and other information provided on SOAs through the auditing mechanism set forth in 37 CFR 201.16.

1. Proposed Requirement to Explain Variation in Data Between Spaces E and K

In proposing that the Office require “greater congruity” between these spaces, Program Suppliers specifically requested that the Office instruct remitters that the gross receipts reported in Space K should approximate calculated gross receipts (*i.e.*, the number of subscribers in each category identified in Space E, multiplied by the applicable rate) and require cable operators to explain briefly in Space K any variation of more than 10% between calculated and reported gross receipts.²⁶ National Association of Broadcasters (“NAB”) supported this proposal, stating that “requiring greater congruity between the ‘gross receipts’ information in Space K . . . and the subscriber and rate

²⁴ Program Suppliers Comments at 6. Broadcast Music, Inc., The American Society of Composers, Authors and Publishers, Broadcast Music Inc., and SESAC, Inc. (collectively, “Music Claimants”) submitted their own comments in response to the NOI, stating that “as a general matter, [they] support MPAA’s comments and proposed revisions to the SOAs.” Music Claimants Comments at 2.

²⁵ Petition at 3; *see also* Program Suppliers Comments at 5–7.

²⁶ Program Suppliers Comments at 5–6, 8.

information in Space E would allow the Office to conduct its compliance reviews with the benefit of more readily comparable base data.”²⁷

Cable associations National Cable & Telecommunications Association (“NCTA”) and American Cable Association (“ACA”) opposed this suggestion. Specifically, ACA maintained that title 17 does not require such detailed reporting and suggested that instead, copyright owners should request additional information about individual SOAs if the filing appeared questionable.²⁸ NCTA stated that even if the Office adopted all of the Program Suppliers’ proposed changes to the SOA (discussed further below), the “calculated gross receipts” derived from Space E and actual gross receipts would still not be identical. For example, NCTA asserted that simply multiplying tier charges by the number of subscribers per tier would not equal gross receipts since both tier charges and subscribership fluctuate over six months due to, among other things, periodic rate adjustments to “reflect inflation, changes in the channels offered, [and] increased programming costs for the basic tier.”²⁹ NCTA also stated that variations between gross receipts derived from using the data in Space E and the actual gross receipts reported under Space K result because the number of subscribers in Space E are reported as of the last day of the accounting period, whereas gross receipts are accumulated over the entire six-month period.³⁰

The Office understands Program Suppliers’ position that a variance explanation requirement would aid copyright owners in making a rough comparison between the amount of “gross receipts” given in Space K and the result of multiplying the number of

²⁷ NAB Comments at 1.

²⁸ ACA Comments at 5–6.

²⁹ NCTA Comments at 5.

³⁰ *Id.*

subscribers by the rates given in Space E. This requirement, however, would go beyond what has traditionally been required of remitters and may be inappropriate in light of differences in how data is reported in the two spaces. For example, the amount in Space K may vary depending on whether the cable system's accounting is done on an accrual or cash basis and, as noted by NCTA, a comparison between Spaces E and K is difficult since the information in the two spaces reflects different time periods (*i.e.*, Space E calls for figures as of the last day of the accounting period whereas Space K calls for gross receipts for the entire accounting period).

The Office is also concerned that a variance explanation requirement could increase burdens on the Office, by requiring its Licensing Division examiners to assume a far greater role in examination of SOAs than has traditionally been the case. Under the current examination scheme, the Office simply checks whether SOAs contain “obvious errors or omissions”—not to identify all possible deficiencies.³¹ It has never been the Office's practice to compute totals in Space E and compare the result with Space K, or otherwise attempt to validate the information provided in those spaces. The variance explanation requirement, however, apparently envisions a role of the Office in calculating the proposed 10% variance that would go beyond checking for obvious errors and omissions.

For the same reasons, while the Office is considering adding an instruction to its SOAs generally explaining that Space E is intended to allow for a rough comparison with reported gross receipts, the Office tentatively concludes that it is not appropriate to adopt Program Suppliers' related proposal to explicitly instruct remitters that the gross receipts

³¹ See 37 CFR 201.17(c)(2).

reported in Space K should approximate the number of subscribers in each category identified in Space E, multiplied by the applicable rate.

2. Proposed Requirement to Provide More Detailed Reporting of Subscriber and Rate Information (Space E)

As noted above, Program Suppliers' Petition proposed "greater congruity" between gross receipts and subscriber and rate information on SOAs. In response, the Office agrees that it may be advisable to update the subscriber and rate information required by Space E to provide private parties with more granular information to make a rough comparison with the gross receipts information provided in Space K, including by making use of the audit mechanism provided by the regulations.³² With the exception of one amendment to the regulatory usage of the word "converter," which, as discussed below, is intended to be technical, these proposed changes are to the Office's forms and not its regulations.

While the audit right established by STELA provides a mechanism for copyright owners to verify information provided by cable operators and ensure they are being accurately compensated for use of their intellectual property under the compulsory license, these audits are limited in various ways, including by accounting period, frequency, and scope of initial and expanded audits as proscribed in the Offices regulations.³³ These audits are not intended to substitute for accurate and complete information provided by cable operators on the SOAs; nor is there an expectation that every single SOA would be audited. Indeed, it is important for SOAs to provide meaningful information to facilitate copyright owners' determination of whether or not to

³² *Id.* § 201.16.

³³ 17 U.S.C. 111(d)(6); 37 CFR 201.16.

initiate an audit. Accordingly, this section outlines proposed changes or clarifications to reporting requirements in Space E concerning categories of service and other rate information.

Space E implements 37 CFR 201.17(e)(6), which requires remitters to provide “[a] brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters.”³⁴ The regulation further states that “[e]ach entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) . . . shall be considered one subscriber”³⁵ subject to charges by the cable system for the basic service of providing secondary transmissions. These requirements are intended to complement the regulatory definition of “gross receipts,” which includes “the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees.”³⁶

As depicted below, Space E currently requires cable operators to report their number of subscribers and corresponding rate, “broken down by categories of secondary transmission service” offered to subscribers.³⁷ As the form instructs, “[t]he information in Space E should cover all categories of secondary transmission service of the cable system, that is, the retransmission of television and radio broadcasts by your system to subscribers.” This information is reported through “Block 1,” which “lists the categories of secondary transmission service that cable systems most commonly provide to their

³⁴ 37 CFR 201.17(e)(6)(i).

³⁵ *Id.* 201.17(e)(6)(iii)(B).

³⁶ *Id.* 201.17(e)(b)(i).

³⁷ Short Form SOA at 2, Space E; Long Form SOA at 2, Space E.

subscribers,” and “Block 2,” which allows cable systems to add brief descriptions of additional categories for secondary transmission service that they offer to customers:

BLOCK 1			BLOCK 2		
CATEGORY OF SERVICE	NO. OF SUBSCRIBERS	RATE	CATEGORY OF SERVICE	NO. OF SUBSCRIBERS	RATE
Residential:					
• Service to first set					
• Service to additional set(s)					
• FM radio (if separate rate)					
Motel, hotel					
Commercial					
Converter					
• Residential					
• Non-residential					

As the Petition suggested, and as the Licensing Division’s examination of recently filed SOAs illustrates, there appear to be opportunities to improve the consistency and quality of information reported in Space E. Specifically, Program Suppliers noted that there currently is “scant information” about the tiers of service (*e.g.*, basic, expanded, digital) offered by cable operators that contain broadcast signals.³⁸ Program Suppliers requested that the Office revise its SOAs to require a variety of information, including:

- (1) each tier of service they provide for a separate fee, noting which tiers contain broadcast signals, (2) the rates associated with each service tier, and whether the fees collected for each package are included or excluded from their gross receipts calculation, (3) the number of subscribers receiving each service tier, (4) the lowest tier of service including secondary broadcast transmissions that is available for independent subscription, and (5) any tier of service or equipment for which purchase is required as a prerequisite to obtaining another tier of service.³⁹

³⁸ Petition at 8 (citing 37 CFR 201.17(e)(7)).

³⁹ *Id.* at 9–10.

In addition, the Office of the Commissioner of Baseball, National Basketball Association, National Football League, National Hockey League, Women's National Basketball Association, and the National Collegiate Athletic Association (a group collectively referred to as "Joint Sports Claimants" or "JSC") expressed concerns that cable operators could limit the reporting of gross receipts to revenues derived solely from the lowest priced tier of service carrying broadcast signals and exclude revenues derived from higher priced tiers that also carry such signals.⁴⁰

While the Office does not endorse every proposal of the Petition, in light of the increased variation in rates offered by cable operators, the Office agrees with revising Space E to require a somewhat more granular breakdown of the number of subscribers and rates charged for the various pertinent categories of service provided to subscribers. Remitters would be instructed to list the total number of subscribers for each category of service as well as the corresponding rate (or range of rates), and to mark "N/A" if they did not offer service in a given category. The Office hopes that these changes will make it easier for cable operators to more accurately report the number of subscribers for the various services they offer.

Specifically, the Office proposes to update the various bolded categories of service—currently listed in Block 1 of Space E as "Residential," "Motel, hotel," "Commercial," and "Converter." The Office proposes to replace these categories with the following: "Single-unit residential," "Multi-unit residential," "Motel, hotel," "Commercial," "Other MDU," and "Equipment." In addition, the Office proposes to add additional space below each category for providers to provide a further breakdown that

⁴⁰ JSC Comments at 2–3.

captures each relevant category of retransmission of television and radio broadcasts offered to subscribers. In doing so, the proposed rule would replace the existing categories of service listed under what is currently labeled “Residential”— “Service to first set,” “Service to additional set(s),” and “FM radio (if separate rate)” —with the more generic categories “basic service 1,” “service 2,” and “service 3.” In addition, the proposed rule would list these same categories underneath most of the additional types of subscribers (*e.g.*, “motel, hotel,” or “commercial”). The category “equipment” would retain the current subcategories “residential” and “non-residential.” Remitters could add additional categories of service as relevant to their business in empty lines, currently labeled “Block 2” of Space E. The Office is also considering whether space should be provided for cable operators to briefly describe these additional services to reflect the specific offering (*e.g.*, “expanded” or “sports and news bundle”). Finally, the Office proposes clarifying in its instructions that cable operators should separately list the number of subscribers and rate information for each cable service offered that contains any broadcast signals.

The proposal to break up the existing “Residential” category into single- and multi-unit sub-categories is intended to alleviate some discrepancy in reporting practices for residential multiple-dwelling units (“MDUs”), as noted in earlier stakeholder comments, as well as better organize the type of rate information provided. For example, in their Petition, Program Suppliers stated that while some cable operators report the “total subscriber counts” for each of the MDUs they serve (albeit in a manner that leaves it unclear how these numbers are derived), others report each MDU simply as one subscriber, while still others leave the lines relating to “motel, hotel” or “commercial”

categories of service blank.⁴¹ Under the proposal here, the Office intends for remitters to report single-family homes and individual unit apartment or condominium subscribers on the “single-unit residential” space, and subscribers on behalf of an overall apartment or condominium building on the “multi-unit residential” space. If an operator has a single contract for cable service on behalf of the residents or occupants of a multi-unit residential building, the operator should report that building served as one multi-unit residential subscriber, and the rate (or range of rates) the operator receives for cable service from those subscribers.⁴² In addition, the replacement of the term “converter” with “equipment” on the SOA forms and in the regulation is simply intended to modernize regulatory terminology. The Office seeks comment on these proposed changes, including whether it would be advisable to specifically add the category of “other MDU,” which could encompass subscriptions for non-commercial multi-dwelling units such as penitentiaries, churches, or schools, or whether it is sufficient to allow cable operators to add categories of service as needed in the blank section of Space E.

These proposed changes are also intended to recognize the increased variety in cable subscription rates by providing a flexible table to allow cable operators to report each category of service “for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters.”⁴³ For example, since the Petition was received, the cable marketplace has experimented with a variety of service offerings, ranging from tiers of packages offering over 400 channels to

⁴¹ Petition at 6–7 (citing Short Form SOA at 2, Space E; Long Form SOA at 2, Space E); *see also* 71 FR at 45750 (noting Program Suppliers’ concerns over Space E).

⁴² *See* 37 CFR 201.17(e)(6)(iii)(B) (listing a private home owner, apartment owner, apartment resident, motel owner as subscriber examples).

⁴³ *Id.* 201.17(e)(6)(i).

skinny bundles emphasizing family friendly or sports-related programming. Meanwhile, the Office recognizes that it is no longer commonplace for cable operators to charge additional fees for “service to additional sets” or “FM radio,” but any remitter who does offer these services for a separate fee could list them as a separate service.

In addition, for each service offered to a category of subscribers, the Office proposes to allow cable operators to report a range of rates that the cable operator actually charged on the last day of the accounting period.⁴⁴ This instruction is intended to address pricing variations, as well as concerns from NCTA that reporting each rate charged to MDU subscribers based on individual negotiations would be “enormously difficult, and would unfairly require operators to divulge competitively sensitive information.”⁴⁵ As noted above, cable operators could also add additional categories of services to report rates that correspond to different types of service. The Office invites comment on whether there should be a limit on the variance that may be reported for a single service, such as a requirement that the highest amount may be no more than 100% of the lowest amount in a range (*e.g.*, a range of \$14.99-\$26.99 would be permissible, but not a range of \$24.00-\$78.00), and whether any variance limit should be higher for MDUs to reflect the more individualized nature of services offered.

Finally, the Office proposes that information regarding categories of service shall not be left blank.⁴⁶ If a cable operator does not serve a specific category, a “zero” or a “N/A” (not applicable) should be reported in the appropriate space. These revisions are intended to facilitate the review of cable SOAs.

⁴⁴ See Petition at 7; Program Suppliers Reply Comments at 12–14.

⁴⁵ NCTA Comments at 6.

⁴⁶ See Program Suppliers Reply Comments at 12–14.

Further, the Office intends to revise Space E's instructions and its regulatory definition of "gross receipts" to specifically note that cable operators' gross receipts must include revenue from subscription to non-broadcast tier(s) and/or from equipment sales or leases if they are required to obtain tiers with broadcast signals. If a tier or other service has no broadcast signals, and is not required to be purchased to obtain access to broadcast signals, it need not be reported in Space E. This addition does not represent a substantive change in policy, but is intended to provide more detailed guidance in furtherance of the Office's current regulatory definition of "gross receipts."⁴⁷ This change is also in accordance with *Cablevision v. MPAA*, which found this definition and the Office's longstanding requirement that "revenues from all tiers other than pay cable and from all channels within each included tier must be included in gross receipts" to be reasonable.⁴⁸

In sum, by updating the pre-populated categories listed in Space E and requiring more detail regarding the categories of service offered (*i.e.*, by breaking out currently-reported subscriptions into separate tiers of service and listing the per-tier rate or range of rates), the Office hopes to address concerns about the adequacy of reported information. At the same time, the Office does not propose to adopt every information category proposed by Program Suppliers, tentatively agreeing with NCTA and ACA that requiring filers to provide information on offerings that do not contain broadcast signals (or are not

⁴⁷ See 37 CFR 201.17(b)(1).

⁴⁸ *Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am., Inc.*, 836 F.2d 599, 602, 611 (D.C. Cir. 1988).

prerequisites to obtaining service containing any broadcast signals) would be inappropriate, as those tiers do not contribute to gross receipts.⁴⁹

3. Reporting of Bundled Services in Gross Receipts and Subscriber Rates (Spaces E and K)

For years, cable operators and other multichannel video programming distributors have marketed video, internet data, and voice services as a single bundle of communication products to subscribers for a set price. Bundling offers certain subscriber benefits, such as price discounts and a single monthly bill. While pricing models vary, subscribers generally pay less for a bundled package than if purchasing each service individually.

From time to time, the Office receives questions on how to report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services. The Office is considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service. The Office welcomes comments on how cable operators currently report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services, and whether the Office's regulations should be amended to provide more guidance.

B. Definition of Cable System

The Office proposes to amend the regulatory definition of "cable system" to reflect both the Copyright Office's longstanding position that such systems are limited to systems providing only localized retransmissions of limited availability, and the uniform

⁴⁹ See NCTA Comments at 7; ACA Comments at 7–8.

case law holding that internet-based retransmission services are excluded from the section 111 compulsory license.⁵⁰

As the Ninth Circuit recently explained, Congress did not intend for section 111 “to service the entire secondary transmission community . . . without regard to the technological makeup of its members,” and instead limited the cable license to a narrower subset of providers that the statute defines in a “detailed, if arguably ambiguous, way.”⁵¹

The Act requires a “cable system” to make secondary transmissions by “wires, cables, microwave, or other communications channels.”⁵² As the Ninth Circuit recognized, when read in conjunction with the whole of section 111 and the rest of the Copyright Act, it is clear that Congress did not intend section 111 “to sweep in secondary transmission services with indifference to their technological profile.”⁵³ As the Office has previously noted, “at the time Congress created the cable compulsory license, the FCC regulated the cable industry as a highly localized medium of limited availability, suggesting that Congress, cognizant of the FCC’s regulations and the market realities, fashioned a compulsory license with a local rather than a national scope.”⁵⁴ Indeed, the localized nature of the cable statutory license is reflected throughout section 111. For example, in defining “cable system,” section 111 states that two or more systems operating from “one headend”⁵⁵ are considered a single system; the same section also

⁵⁰ See, e.g., *Fox Television Stations, Inc. v. Aereokiller, LLC*, 851 F.3d 1002, 1007 n.1 (9th Cir. 2017) (noting that seven other federal courts held that “Internet-based transmission services” did not qualify as a “cable systems” under the Copyright Act).

⁵¹ *Id.* at 1009.

⁵² 17 U.S.C. 111(f)(3).

⁵³ *Aereokiller*, 851 F.3d at 1009.

⁵⁴ 62 FR 18705, 18707 (Apr. 17, 1997); see also *Aereokiller*, 851 F.3d at 1014 (quoting same).

⁵⁵ Under FCC regulations, a “principal headend” is defined as “(1) the headend, in the case of a cable system with a single headend or, (2) in the case of a cable system with more than one

makes references to “contiguous communities.”⁵⁶ Thus, as the Ninth Circuit properly concluded, the Office’s established understanding of the section 111 license “aligns with [section] 111’s many instances of location-sensitive language.”⁵⁷

Indeed, the overall operation of the section 111 license assumes cable systems operate as localized retransmission services. The royalty structure for the license is predicated upon determining whether the retransmission of television programming is “local” to or “distant” from the local service area of the primary transmitter of such programming.⁵⁸ Specifically, royalty rates for larger (*i.e.*, Long Form SOA) cable systems are calculated based on a value known as the “distant signal equivalent,”⁵⁹ which is calculated based on the type and number of stations with “non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter* of such programming.”⁶⁰ The statute, in turn, defines “local service area” in precise geographic terms. For example, for low power stations, the statute itself defines the local service area in terms of a specific radius in miles around a transmitter site.⁶¹ Accordingly, for a cable station to accurately calculate royalties under the statutory license, it must know with some precision the locations to which the cable system has retransmitted a broadcast station’s signal—and whether that retransmission

headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade [the broadcast signal carriage requirements.]” 47 CFR 76.5(pp).

⁵⁶ 17 U.S.C. 111(f)(3).

⁵⁷ *Aereokiller*, 851 F.3d at 1013.

⁵⁸ See 17 U.S.C. 111(d)(1), (f)(4), (5).

⁵⁹ See, *e.g.*, *id.* 111(d)(1)(B).

⁶⁰ *Id.* 111(f)(5)(i) (emphasis added).

⁶¹ See 17 111(f)(4). Specifically, the statute defines the local service area for “low power stations” as comprising “the designated market area . . . that encompasses the community of license of such station,” *plus* communities outside the designated market area that are either “wholly or partially within 35 miles of the transmitter site” or, in the case of stations located in larger metropolitan areas, “wholly or partially within 20 miles of such transmitter site.” *Id.*; see also *id.* 122(j)(2)(C) (defining “designated market area”).

was within or outside the local service area of that station. This is something that is possible with traditional, hard-wired cable systems and their equivalent, because of the localized nature of their retransmission services.

Other aspects of the statutory scheme similarly underscore the localized nature of the statutory license. As discussed in greater detail below, for purposes of categorizing cable systems for royalty purposes, the statute specifies that two or more cable systems constitute a single cable system for purposes of section 111 if they are under common ownership or control and “are located in the same or contiguous communities.”⁶² Similarly, the Office’s section 111 regulations require cable operators to report the communities served by each cable system (*i.e.*, the cities or towns).⁶³ Thus, determining what “community” a cable system serves requires knowing with some precision where retransmitted signals are being sent, which necessarily implies that a “cable system” is one that operates via a localized transmission system.⁶⁴

Consistent with this understanding of the overall legislative scheme, the Office in prior rulemakings has held a consistent view that a “cable system” under the meaning of section 111 must operate in an inherently localized retransmission medium. For instance, in 1992 and 1997, in the context of rulemakings to determine whether satellite and wireless cable retransmission systems could qualify for the section 111 license, the Office concluded that the section 111 license “applies only to localized retransmission services,”⁶⁵ and that “a provider of broadcast signals [must] be an inherently localized

⁶² *Id.* 111(f)(3).

⁶³ 37 CFR 201.17(e)(4).

⁶⁴ *Cf. Aereokiller*, 851 F.3d at 1013–14 (deferring to Copyright Office interpretation based on section 111’s use of “location-sensitive language”).

⁶⁵ 57 FR 3284-01, 3292 (Jan. 29, 1992) (codified at 37 C.F.R. pt. 201).

transmission media of limited availability to qualify as a cable system.”⁶⁶ Applying this standard, the Office found that satellite carriers could not qualify as cable systems.⁶⁷ The Eleventh Circuit upheld the reasonableness of that determination.⁶⁸ Congress established the section 119 and 122 licenses to provide for a separate statutory licensing scheme for satellite carriers.⁶⁹ Thus, as the Ninth Circuit recently noted, “if Congress meant § 111 to sweep in secondary transmission services with indifference to their technological profile, then it was strange for Congress to have provided separate compulsory license provisions—§§ 119 and 122—for broadcast retransmissions by satellite carriers.”⁷⁰

Similarly, in policy reports and testimony before Congress, the Office consistently communicated its position that internet-based retransmission services are not “cable systems” under section 111.⁷¹ As explained in more detail in those reports, the Office’s

⁶⁶ 62 FR 18705, 18707 (Apr. 17, 1997) (codified at 37 C.F.R. pt. 201).

⁶⁷ 57 FR at 3292, 3296. In this 1992 rulemaking, the Copyright Office also concluded that “wireless” cable systems could not qualify as “cable systems” under section 111. *Id.* at 3293–95. Congress amended section 111 in 1992 to reverse that decision. Satellite Home Viewer Act of 1994, Pub. L. No. 103-369, 108 Stat. 3477 (1994); 59 FR 67635 (Dec. 30, 2004). In doing so, however, Congress did not question the Copyright Office’s conclusion that the statute was limited to localized retransmission services. To the contrary, Congress recognized that such wireless cable systems would have to be treated the same as wired systems for purposes of calculating distant signal royalties under the statutory license. *See* S. Rep. No. 103-407 at 14 (1994); H.R. Rep. No. 103-703 at 19 (1994); *see generally* 62 FR at 18709 (discussing legislative history).

⁶⁸ *Satellite Broad. & Commc’ns Ass’n of Am. v. Oman*, 17 F.3d 344, 346–48 (11th Cir. 1994); *see also* 37 CFR 201.17(k) (1992) (“Satellite carriers, [and] satellite resale carriers . . . are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code.”).

⁶⁹ Satellite Home Viewer Act of 1994, Pub. L. No. 103-369, 108 Stat. 3477 (1994); 59 FR 67635 (Dec. 30, 2004).

⁷⁰ *Aereokiller*, 851 F.3d at 1009.

⁷¹ *See, e.g.*, Register of Copyrights, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* 97–99 (1997), <https://www.copyright.gov/reports/study.pdf>; *Copyrighted Webcast Programming on the Internet: Hearing Before the H. Subcomm. on Courts and Intell. Prop.*, 106th Cong. 5–6 (2000) (statement of Marybeth Peters, Register of Copyrights and Dir., U.S. Copyright Office); Register of Copyrights, *Satellite Home Viewer Extension and Reauthorization Act Section 109 Report* 193–94 (2008), <http://www.copyright.gov/reports/section109-final-report.pdf> (“Section 109 Report”); Register of Copyrights, *Satellite Home*

view was based on an understanding that, unlike other systems qualifying for the cable license, online streaming services are not closed, localized systems, and so are outside the statutory license. By contrast, in a 2008 policy report, the Office opined that video programming distribution systems using Internet Protocol technology, by virtue of the fact that they were inherently closed systems delivering content to a limited set of subscribers at their homes, could meet the definition of “cable system”⁷²

In sum, in light of the Office’s understanding of section 111, its longstanding policy views, and the uniform direction of case law, the Office proposes adding the following sentence to its regulatory definition of “cable system”: “A provider of broadcast signals must be an inherently localized and closed transmission system of limited availability to qualify as a cable system.”

C. Interpretation of Community and Reporting of Area Served (Space D)

1. Cable Headend Location

Section 111(f) of the Copyright Act states in relevant part that: “For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.”⁷³ Moreover, two cable systems operating from the same headend are considered to be one system for purposes of calculating the section 111 royalties “even if they are owned by different entities.”⁷⁴ Currently, a cable

Viewer Extension and Localism Act Section 302 Report 47–49 (2011), <https://www.copyright.gov/reports/section302-report.pdf>.

⁷² Section 109 Report at 197–99; *see also id.* at 200 (concluding that retransmission of broadcast signals to mobile devices should be outside statutory license).

⁷³ 17 U.S.C. 111(f)(3); *see also* 37 CFR 201.17(b)(2).

⁷⁴ Short Form SOA at ii; Long Form SOA at ii; *see also* 43 FR at 958.

operator is required to identify on its SOA only the community or communities in which it operates and not the location of the headend(s) serving those communities.⁷⁵

In their Petition, Program Suppliers requested that the Office revise Space D of the SOA form to require cable operators to identify the location of each headend and the specific communities served from that headend.⁷⁶ Program Suppliers stated that this information will help them determine whether cable operators are, in fact, complying with the section 111(f) requirement to treat all cable systems operating from a common headend as a single cable system and suggested that a headend identification requirement would not burden cable operators, as the FCC already requires them to maintain records of the location of principal headends.⁷⁷ As to which headend a cable operator should report where there are multiple headends, Program Suppliers stated that an operator should be required to identify the location of each headend that serves communities listed by its systems.⁷⁸ NAB concurred that including the specific location of headends would enhance the Office's review of SOAs.⁷⁹

By contrast, NCTA remarked that if a single system uses more than one headend, it should make no difference to copyright owners which one is identified; in that instance, an operator has already determined that it operates a single system for copyright

⁷⁵ See 37 CFR 201.17(e)(4); Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

⁷⁶ Petition at 10–11.

⁷⁷ See Program Suppliers Comments at 12–13 (citing 47 CFR 76.1708, 76.1716). The Office notes that the FCC recently eliminated the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend. *In re Revisions to Public Inspection File Requirements – Broadcaster Correspondence File & Cable Principal Headend Location*, 32 FCC Rcd. 1565 (2017), https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-3A1.pdf.

⁷⁸ *Id.* at 13.

⁷⁹ NAB Comments at 1–2.

purposes.⁸⁰ ACA commented that if a Program Supplier has a legitimate question regarding the location of a headend, it can request clarification from that particular operator, and that Program Suppliers have employees and outside counsel devoted to precisely that type of activity.⁸¹

The Office tentatively concludes that it is not clear that artificial fragmentation by cable systems seeking to avoid paying a higher royalty rate (*i.e.*, a Long Form SOA cable system reporting as several Short Form cable systems) is currently a pressing concern, or that requiring the reporting of headend information would significantly help lessen this issue, compared to the additional burden imposed upon cable operators. Given the lack of a strong record demonstrating the need for this information, the Office declines to adopt a headend-reporting requirement at this time.

2. County Information

The Office's regulations currently require a cable operator to report the name of the community or communities served by its cable system.⁸² Space D of the SOAs require a cable operator to identify the communities it serves, including by listing the "city or town" and "state" served.⁸³ The SOAs do not currently require identification of the county in which the given community is located, although some operators report counties on a voluntary basis.

In their Petition, Program Suppliers requested that the Office require cable operators to identify the county where each cable community is located, in addition to the

⁸⁰ NCTA Comments at 8.

⁸¹ ACA Comments at 11.

⁸² 37 CFR 201.17(e)(4).

⁸³ Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

city and state.⁸⁴ They commented that this information would help clarify whether a signal is local, distant, or partially distant (*i.e.*, distant to some subscribers but local to others) for section 111 purposes.⁸⁵ NCTA agreed that the absence of county designations has hampered legitimate efforts to review certain SOAs and did not object to modification of the SOA forms to require inclusion of county information in Space D.⁸⁶ Similarly, ACA stated that this requirement will impose minimal additional burdens and will facilitate review of SOAs by the Licensing Division.⁸⁷

Because the parties agreed that inclusion of the county on the SOA would be beneficial, the Office proposes that Space D should be revised to require “county” information, but seeks comment on whether this proposed change remains desirable to stakeholders. The Office concludes that regulatory change is not necessary to implement this update to the form.

3. Definition of “Community”

Under the Copyright Act and the Office’s regulations, two or more cable systems constitute a single cable system for purposes of section 111 if, as relevant here, they are under common ownership or control and are located in the same or “contiguous communities.”⁸⁸ Where common ownership of cable systems is established, defining the “community” served is important to determine whether two or more cable facilities operate in “contiguous communities,” and whether those facilities should file as a single cable system, preventing artificial fragmentation of large cable systems into multiple

⁸⁴ Petition at 11–13.

⁸⁵ *Id.* at 12.

⁸⁶ NCTA Comments at 9.

⁸⁷ ACA Comments at 4.

⁸⁸ 17 U.S.C. 111(f)(3); 37 CFR 201.17(b)(2).

smaller systems to avoid the higher royalty payments Form 3 cable systems pay under section 111.⁸⁹

The Office's regulations currently state that a cable system's "community," for purposes of section 111, is the same geographic area as that specified under the definition of "community unit" as defined in the FCC's rules and regulations.⁹⁰ FCC regulations define "community unit" as "[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)."⁹¹

Program Suppliers requested that the Office amend the regulatory definition of the term "community" so that a cable operator's "franchise area" should be the *de facto* regulatory boundary for defining cable communities instead of the FCC's community unit definition. In support, Program Suppliers noted that the FCC itself, in written opinions, has interpreted "community unit" to mean cable franchise areas.⁹² But while it may be true that the FCC has itself at times equated its regulatory definition of "community unit" with a given cable system's franchise area, that is, the political jurisdiction for which a local government body has granted it the right to provide cable television to its residents, the regulatory definition refers more broadly to a "distinct community" and the Petition itself suggests the FCC has not been uniform in that interpretation. In its NOI, the Office asked if there is a general pattern of disaggregation

⁸⁹ See 43 FR 958 (Jan. 5, 1978) ("[T]he legislative history of the Act indicates that the purpose of this sentence [in section 111(f)] is to avoid the artificial fragmentation of cable systems.").

⁹⁰ 37 CFR 201.17(e)(4); *see also* Short Form SOA at 1b, Space D; Long Form SOA at 1b, Space D.

⁹¹ 47 CFR 76.5(dd).

⁹² Petition at 16 (citation omitted).

by cable operators to support a rule change, and if so, whether it would be reasonable to equate the term “community” with a cable operator’s “franchise area.”⁹³

In comments, NCTA suggested that the FCC community unit concept was part of a long-established cable copyright paradigm.⁹⁴ It explained that the cable industry’s signal carriage obligations under current FCC rules, notably the syndicated exclusivity rules, continue to depend on the community unit definition, and were necessary under the FCC’s former distant signal rules for establishing whether a distant signal is permitted for copyright purposes. NCTA further stated that Program Suppliers offered no evidence that Congress intended franchise areas to play a decisive role in defining a single cable system for copyright purposes. NCTA noted that with the advent of statewide franchising in some states, the proposed rule change could result in the artificial joinder of systems that could be hundreds of miles apart and not interconnected in any way.⁹⁵ In reply comments, NAB agreed that the Copyright Office should continue to rely upon the FCC’s regulatory definition of community unit, and suggested that a literal application of those rules would prevent artificial fragmentation by requiring cable operators to list all contiguous units that shared a franchise authority.⁹⁶

The Copyright Office tentatively concludes that the facts and the law do not support replacing the community unit definition with a franchise area definition. Moreover, since the receipt of the Petition, the Office has not noted a practice of fragmentation, and has learned that this issue may be of less interest to stakeholders. The Office invites public comments on whether this issue is still significant to stakeholders.

⁹³ 71 FR at 45752.

⁹⁴ NCTA Comments at 11.

⁹⁵ *Id.* at 11–13.

⁹⁶ NAB Reply Comments at 12–13.

D. Grade B Contour (Parts 6 and 7)

Under the Copyright Act, the definition of “local service area of a primary transmitter” establishes the difference between “local” and “distant” signals and “therefore the line between signals which are subject to payment under the compulsory license [under section 111] and those that are not.”⁹⁷ The shifting technologies used for television transmission, as reflected in STELA, have led the Copyright Office to question whether certain parts of its regulations and SOA forms should be modified or eliminated.

Specifically, the parts of the Long Form SOA which reference the “Grade B contour,” an FCC construct used for many years in the context of analog television stations, appear to be obsolete. Section 111 imported this construct, as detailed in FCC rules and regulations, with respect to determining the local service area of certain signals.⁹⁸ Subsequently, with the advent of digital television signals, the FCC has recognized a new standard known as the “noise-limited service contour.” STELA amended section 111 by adding to the definition of “local service area” any area “within the noise-limited contour as defined in 73.622(e)(1) of title 47, Code of Federal Regulations.”⁹⁹

Two parts of the form appear to have been overtaken by these technological developments. First, the Long Form SOA asks for certain information related to certain UHF signals within a Grade B contour, for purposes of calculating royalties paid under a 3.75% fee in Part 6, Block B of the form. Under the FCC’s old “market quota” rules, which were incorporated by reference into section 111, a cable operator could carry a

⁹⁷ H.R. Rep. No. 94-1476, at 99 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5714.

⁹⁸ 17 U.S.C. 111(f)(4).

⁹⁹ STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

certain number of distant signals based upon a complex scheme involving the type of the television market and the type of signal available. A cable operator, however, could carry more signals than its market quota of distant signals if the station was considered “permitted” by the FCC’s 1976-era rules. The concept of “permitted” stations has been imported into the section 111 license. Under section 111, an operator that carries a non-permitted signal above its market quota is generally subject to a 3.75% fee for carriage of that signal, in lieu of the minimum royalty rate.¹⁰⁰ There are several bases of “permitted” carriage, however, for which retransmission will not trigger the 3.75% fee. One of these bases—basis “G”—includes carriage of commercial UHF stations within a Grade B contour.¹⁰¹ On cable SOAs, permitted signals, including those under basis “G,” must be reported in Part 6, Block B, or be subject to the 3.75% fee calculation in Part 6/Block C.¹⁰²

The Office, in a 2008 Notice of Proposed Rulemaking concerning digital broadcast signals (“Digital Signals NPRM”) that pre-dated STELA,¹⁰³ made initial conclusions concerning the continued relevance of the “basis G” for the cable retransmission of digital television signals. With regard to commercial UHF stations placing a Grade B contour over a cable system, the Office noted that the Grade B contour could not be replaced by the noise limited service contour as the appropriate measurement to determine whether a commercial UHF station is “permitted” for

¹⁰⁰ See 37 CFR 387.2. All cable systems filing Long Form SOAs must pay at least the minimum fee which is 1.064% of gross receipts. The cable system pays either the minimum fee or the sum of the base rate fee and the 3.75% fee, whichever is larger, and a Syndicated Exclusivity Surcharge, as applicable. Long Form SOA at 10.

¹⁰¹ See Long Form SOA at 13.

¹⁰² See Long Form SOA at 13.

¹⁰³ See 73 FR 31399 (June 2, 2008). Because STELA confirmed the application of section 111 to digital broadcast signals, the Office considers the Digital Signals NPRM to be closed.

copyright purposes because the new contour parameters were not in use at the time Section 111 was enacted.¹⁰⁴

As noted, after the Digital Signals NPRM, STELA amended the definition of “local service area of a primary transmitter” in section 111 so that such area would include the area within the noise limited service contour.¹⁰⁵ This amendment confirms to the Office that the noise limited service contour is the proper standard by which to measure the reach of digital television signals with respect to the section 111 license, including digital UHF signals. And, as most relevant here, the amendment appears to render “basis G” obsolete as it currently exists. That is because, as stated above, royalty rates under the section 111 license are calculated based on the “secondary transmission of any non-network television programming carried by a cable system in whole or in part *beyond the local service area of the primary transmitter* of such programming.”¹⁰⁶ Any digital signals within the noise-limited service contour are “local” and thus are not subject to the section 111 royalty rate. Thus, it appears that there is no need to treat any station within the noise limited contour as “permitted,” because locally retransmitted stations do not count against the market quota in the first place.

To the extent that the “Grade B contour” construct theoretically may continue to apply to analog signals, the Office questions whether it has become obsolete as a practical matter. From running database queries on submitted SOAs, the Office has learned that permitted basis “G” in Part 6/Block B is rarely, if ever, used. Moreover, in the few cases where cable operators have reported the permitted basis of carriage

¹⁰⁴ *Id.* at 31408–409.

¹⁰⁵ See STELA at sec.104, 124 Stat. at 1235; 17 U.S.C. 111(f)(4).

¹⁰⁶ 17 U.S.C. 111(f)(5) (emphasis added).

category “G,” the Office believes the cable operators may have used the noise-limited contour (for digital signals) interchangeably with the Grade B contour (for analog signals) because they historically reported “G” in the all-analog world (prior to the mandated FCC digital conversion in 2009), and continue to report the “G” permitted basis out of habit. Accordingly, the Office proposes eliminating permitted basis “G” in Part 6/Block B on the cable SOAs (*i.e.*, commercial UHF stations within a Grade B contour). The Office invites public comment on this proposal. The Office is particularly interested in learning whether cable operators still retransmit broadcast signals using analog signals, and if so, to what extent the permitted basis “G” is relevant to this carriage.

Second, the Grade B contour has, in the past, had relevance to other aspects of the statutory license under section 111, including the calculation of a “syndicated exclusivity surcharge.” Cable systems located in whole or in part within a major television market, as defined by FCC rules and regulations, must calculate a syndicated exclusivity surcharge for the carriage of any commercial VHF station that places a Grade B contour, in whole or in part, over the cable system that would have been subject to the FCC’s syndicated exclusivity rules in effect on June 24, 1981.¹⁰⁷ Cable operators report any syndicated exclusivity surcharge in Part 7, Block B of cable Long Form SOAs.

From running database queries on submitted SOAs, however, the Office has learned that the last time Part 7 of the cable SOA was used (*i.e.*, Computation of the Syndicated Exclusivity Charge) was in 2013, on a single SOA. Accordingly, the Office invites public comment on whether Part 7 of the cable SOA should be amended, and

¹⁰⁷ See 37 CFR 201.17(i)(1)(ii), (i)(2)(ii).

whether, more generally, the Office's related regulations should be amended to remove references to a Grade B contour.

E. Changes to SOA Due to Copyright Royalty Board's Proposed Rule Relating to the Retransmission of Sports Programming

In May 2017, the Copyright Royalty Board ("CRB") issued a notice of proposed settlement and proposed rule to require covered cable systems to pay a separate per-telecast royalty (a "Sports Surcharge") in addition to the other royalties that cable systems must pay under section 111.¹⁰⁸ In September, the CRB issued an additional notice concerning whether non-participants to the settlement could be eligible to receive royalties stemming from the Sports Charge, but did not otherwise alter its proposed rule.¹⁰⁹ Under the CRB's proposed rule, the "Sports Surcharge would amount to 0.025 percent of the cable system's 'gross receipts' during the relevant semi-annual accounting period for the secondary transmission of each affected broadcast of a sports event, provided that all of the conditions of the proposed rule are satisfied."¹¹⁰ "Thus, if a covered cable system made a secondary transmission of one affected broadcast, it would pay 0.025 percent of 'gross receipts' during the relevant semi-annual accounting period for that transmission; if it made secondary transmissions of two affected broadcasts, it would pay 0.025 percent of 'gross receipts' during the relevant semi-annual accounting period for each of those transmissions (or a total of 0.050 percent of its 'gross receipts')."¹¹¹

¹⁰⁸ 82 FR 24611 (May 30, 2017).

¹⁰⁹ 82 FR 44368 (Sept. 22, 2017).

¹¹⁰ 82 FR at 24612.

¹¹¹ *Id.*

Assuming the CRB's rule is adopted, the Office intends to amend its cable SOA forms to account for the new Sports Surcharge for semi-annual accounting periods by adding a new Space R that would allow for calculations of this surcharge. No amendments to the Office's regulations are needed to accommodate this change.

F. Interest Payments and Copyright Infringement Liability

The Office's current regulations require cable operators to pay interest on late or underpaid royalty payments.¹¹² In their Petition, Program Suppliers asserted that such payments do not preclude copyright owners from bringing an action against cable operators for copyright infringement during the time period in which the cable operators' royalty payments were not properly remitted, and requested that the Office amend its regulations and revise its SOA forms to include language clarifying that the assessment of interest does not absolve cable operators from copyright infringement liability for failure to make timely royalty payments.¹¹³ Cable associations disagreed, with ACA stating that "[s]ound policy supports maintaining the ability of a cable operator to correct an[y] SOA and pay additional royalties with interest, without the imminent threat of copyright infringement," and that the ability to file amended or late SOAs with interest "provides an efficient means to correct good faith errors in filings[,] while at the same time providing copyright claimants with their full compensation plus interest."¹¹⁴

The Office declines Program Suppliers' suggestion to modify the SOA to state that a payment made after the due date does not bar an infringement action against the cable operator. While section 111(d)(1)(A) directs the Register to issue regulations

¹¹² See 37 CFR 201.17(k)(4); *see also* Short Form SOA at 8, Space Q; Long Form SOA at 9, Space Q.

¹¹³ Petition at 13.

¹¹⁴ ACA Comments at 12; *see also* NCTA Comments at 9.

governing the filing of SOAs, including identification of all secondary retransmissions of broadcast stations, number of subscribers, and gross revenues paid to the cable system, it does not require the Office to determine the scope of liability for copyright infringement; in the Office's view, this question is more properly reserved for the courts in appropriate cases.¹¹⁵

G. Removing outdated references to the Satellite Television Extension and Localism Act

After Congress enacted STELA in 2010, the Office issued implementing regulations that, among other things, established the accounting period for which the new cable operator royalty fee rates would take effect.¹¹⁶ In the seven years since STELA was enacted, however, some references to STELA in the Office's regulations appear to have become outdated and unnecessary. The Office understands that cable operators rarely file SOAs for periods dating back further than the last five years (*i.e.*, for periods prior to the enactment of STELA). Accordingly, the Office proposes amending section 201.17 by deleting outdated references to STELA, and adding language for remitters to contact the Licensing Division for instructions should they need to file SOAs for accounting periods further back than the last five years. The Office invites public comment on this proposal.

H. Technical Amendments

The Office's current regulations provide a number of instructions to cable operators on how to complete SOAs, many of which duplicate the instructions on the

¹¹⁵ There are two other provisions, aside from 17 U.S.C. 111(d)(1)(A), which require action by the Register in the cable statutory licensing context. These are the authority to set filing fees for SOAs under 17 U.S.C. 111(d)(1)(G) and the authority to issue audit regulations under 17 U.S.C. 111(d)(6).

¹¹⁶ 37 CFR 201.17(g)(4).

SOA forms themselves.¹¹⁷ The Office proposes removing regulatory provisions that are duplicative of information provided on cable operator SOA forms and/or on the Office's website.

In addition, the Office's current regulations instruct which information must be provided as part of the electronic funds transfer ("EFT") to pay royalty fees.¹¹⁸ The Office proposes removing this language from the regulations and incorporating it into the instructions for the SOA forms themselves.

These changes are intended to improve the readability of existing regulations and do not represent substantive changes in policy.

III. Reporting Practices—Cable, Satellite and DART

The Office has identified a number of additional issues relating to cable SOA reporting practices, and finds it is administratively efficient to address these new cable reporting practice matters here rather than initiate a new proceeding. Because some of these issues are also pertinent to the filing of SOAs for other statutory licenses, the Office proposes to amend certain reporting rules for cable operators (under section 201.17), satellite carriers (under section 201.11) and digital audio recording equipment manufacturers and importers (under sections 201.27 and 201.28), where applicable, so that there are parallel requirements for all three licenses in the Office's regulations. Each of the following proposed changes are reflected in the updated proposed regulatory language below.

A. Closing out Statements of Account

¹¹⁷ See *id.* 201.17(e)(1)–(4), (8), (10)–(13).

¹¹⁸ *Id.* 201.17(k)(1).

During an initial examination of SOAs, the Office's Licensing Division often makes inquiries of cable system operators regarding the information provided in the SOA.¹¹⁹ Generally, the Office does not make an entire SOA available to the public until the cable operator has responded to the Office's inquiry and the initial examination process has been completed. But oftentimes, the Office may not receive a response to its inquiry until long after the Office's letter or email. In some cases, replies are not received in the Office until years later. Currently, if this happens, the Office re-examines the original SOA in light of the request.

To streamline the administrative process and encourage timely responses to Office inquiries, the Office proposes to close out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence from the Office. After an SOA is closed, it would be placed with other publicly available SOA records. At that point, a cable operator wishing to submit a reply or pay additional royalties or make necessary corrections would need to file an amended SOA along with a filing fee as prescribed in 37 CFR 201.3(e). But, to be clear, operators failing to respond within the prescribed 90-day window would forfeit any potential refund of an overpayment associated with any issue with the SOA identified by the Office in its correspondence.

The Office tentatively concludes that 90 days is a reasonable timeframe for operators to reply to any issues arising from examination of an SOA and that the proposed amendments will facilitate the timely disposition of SOAs. The Office proposes

¹¹⁹ These inquiries generally seek missing or clarifying information pertaining to an element(s) of the SOA and might raise the possibility that there has been an underpayment or overpayment of the royalty fee.

harmonizing this practice across regulations affecting SOAs for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

B. Royalty Refunds

Because the administrative cost of issuing royalty refunds of less than \$50.00 can exceed the amount actually refunded, under the Office's proposed rule, refunds for amounts of \$50.00 or less will issue only where the refund is specifically requested before the SOA is closed and made available for public inspection. If a refund is not requested before the SOA is closed, the amount will be added to the relevant royalty pool. The proposed rule will harmonize this practice across regulations affecting royalty refunds for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers.

C. Payment of supplemental royalty fees and filing fees by EFT

The Office proposes to amend its regulations to require payment of supplemental royalty fees and filing fees by EFT for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers, and eliminate the ability to pay by paper check or money order. Use of EFT has enhanced the efficiency of the Office's royalty collection process by avoiding problems associated with a paper check or money order (*e.g.*, lost checks or delays in processing mail) and by lessening the Office's administrative workload.

D. Interest Assessment

Current regulations regarding the treatment of interest assessment for late payments or underpayments of royalties are similar, but not uniform, for cable operators, satellite carriers, and digital audio recording equipment manufacturers and importers. The

Office proposes to harmonize these regulations so that interest begins accruing on the first day after the close of the period for filing SOAs for all underpayments or late payments of royalties; the accrual period shall end on the date the payment submitted by the remitter is received by the Office; and the applicable interest rate shall be the Current Value of Funds Rate, established by section 8025.4 of the Treasury Finance Manual. In addition, interest payments shall not be required if the interest charge is less than \$5.00.

IV. CONCLUSION

The Copyright Office hereby seeks comment from the public on the amendments proposed in this Notice of Proposed Rulemaking.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

Proposed Regulations

For the reasons stated in the preamble, the Copyright Office proposes to amend 37 CFR part 201 as follows:

PART 201 – GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.11 by:
 - a. Revising paragraph (f)(1).
 - b. Revising paragraph (h)(3)(iv).
 - c. Adding paragraph (h)(3)(vii).
 - d. Adding paragraphs (h)(5) and (h)(6).

The revisions and additions read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(f) * * *

(1) All royalty fees, including supplemental royalty payments, must be paid by a single electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Satellite carriers must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(h) * * *

(3) * * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT.

No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the time limitations provided for in paragraph (h)(3)(i) of this section.

* * * * *

(5) *Interest on late payments or underpayments.* Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing and viewing in commercial

establishments occurring within that accounting period. The accrual period shall end on the date the full payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the FEDERAL REGISTER, in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers wishing to obtain the interest rate for a specific accounting period may do so by consulting the FEDERAL REGISTER for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

3. Amend § 201.17 by:

- a. Revising paragraphs (b)(1) and (2).
- b. Revising paragraph (c) introductory text and paragraph (c)(3).
- c. Adding paragraph (c)(5).
- d. Revising paragraph (d).
- e. Revising paragraph (e) introductory text.
- f. Removing paragraphs (e)(1) through (4), (e)(8), and (e)(10) through (13).

- g. Redesignating paragraph (e)(5) as (e)(1), paragraph (e)(6) as (e)(2), paragraph (e)(7) as (e)(3), paragraph (e)(9) as (e)(4), and paragraph (e)(14) as (e)(5).
- h. Removing ““Secondary Transmission Service: Subscribers and Rates”,” and adding in its place ““Secondary Transmission Service: Subscribers and Rates,”” in the newly redesignated paragraph (e)(2).
- i. Adding “or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations” after “Statement” in the newly redesignated paragraph (e)(2)(iii)(A).
- j. Revising newly redesignated paragraph (e)(2)(iii)(B).
- k. Adding paragraph (e)(2)(iii)(C).
- l. Removing ““Gross Receipts”,” and adding in its place ““Gross Receipts,”” in the newly redesignated paragraph (e)(3).
- m. Removing “Television”,” and adding in its place “Television,”” and removing “and required to be specially identified by paragraph (e)(11) of this section,” in the newly redesignated paragraph (e)(4) in the introductory text.
- n. Revising newly redesignated paragraph (e)(4)(iv).
- o. Removing paragraphs (g)(2) and (g)(4).
- p. Redesignating paragraph (g)(3) as paragraph (g)(2).
- q. Revising paragraph (k) introductory text and paragraph (k)(1).
- r. Removing “satellite carrier” and adding in its place “cable operator” in paragraph (k)(4).
- s. Revising paragraph (l)(1).
- t. Removing “(m)(4)” and adding in its place “(l)(4)” in paragraph (l)(2).

- u. Removing “, for any reason except that mentioned in paragraph (m)(2)(iii) of this section,” in paragraph (l)(2)(ii).
- v. Removing “(m)(2)” and adding in its place “(l)(2)” in paragraph (l)(4).
- w. Removing “(m)(2)(i)” and adding in its place “(l)(2)(i)” in paragraph (l)(4)(iii)(A).
- x. Removing “(m)(2)(ii)” and adding in its place “(l)(2)(ii)” in paragraph (l)(4)(iii)(B).
- y. Revising paragraph (l)(4)(iv).
- z. Removing “(m)” and adding in its place “(l)”, and removing “(e)(14)” and adding in its place “(e)(5)” in paragraph (l)(4)(v).
- aa. Removing “(m)(4)(i)” and adding in its place “(l)(4)(i)” in paragraph (l)(4)(vi).
- bb. Adding paragraph (l)(4)(vii).
- cc. Redesignating paragraph (l)(5) as (l)(7).
- dd. Revising newly redesignated paragraph (l)(5).
- ee. Adding paragraph (l)(6).
- ff. Removing “(m)” and adding in its place “(l)” in newly redesignated paragraph (l)(7).

The revisions and additions read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(b) * * *

(1) Gross receipts for the “basic service of providing secondary transmissions of primary broadcast transmitters” include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals. Gross receipts also include fees for non-broadcast tier(s) of services if such purchase is required to obtain tiers of services

with broadcast signals, and fees for any other type of equipment or device necessary to receive broadcast signals that is supplied by the cable operator. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided that, the origination services are not offered in combination with secondary transmission service for a single fee. In addition, gross receipts shall not include any fees collected from subscribers for the sale of Internet services or telephony services when such services are bundled together with cable service; instead, when cable services are sold as part of a bundle of other services, gross receipts shall include fees in the amount that would have been collected if such subscribers received cable service as an unbundled stand-alone product.

(2) A *cable system* is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. A provider of broadcast signals must be an inherently localized and closed transmission system of limited availability to qualify as a cable system. A system that meets this definition is considered a “cable system” for copyright

purposes, even if the FCC excludes it from being considered a “cable system” because of the number or nature of its subscribers or the nature of its secondary transmissions. The Statements of Account and royalty fees to be deposited under this section shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees. For these purposes, and the purpose of this section, an “individual” cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either:

- (i) In contiguous communities under common ownership or control or
- (ii) Operating from one headend.

* * * * *

- (c) *Submission of Statement of Account, accounting periods, and deposit.*

* * *

- (3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office except for cases where the cable system has ceased operation before the account period closes. Statements of Account and royalty fees received after the filing deadlines of July

30 or January 30, respectively, will be accepted for whatever legal effect they may have, if any.

* * * * *

(5) A cable system that changes ownership during an accounting period is obligated to file only a single Statement of Account at the end of the accounting period. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Statement of Account forms and submission.* Cable systems should submit each Statement of Account using an appropriate form provided by the Copyright Office on its Web site and following the instructions for completion and submission provided on the Office's Web site or the form itself. To file a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

(e) *Contents.* In addition to the instructions for completion and submission provided on the Office's Web site or the form itself, each Statement of Account shall contain the following information:

* * * * *

(2) * * *

(iii) * * *

(A) The description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement or, in the case of a cable system ceasing operations during the accounting period, the facts existing on the last day of operations; and

(B) Each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber. For short-stay multiple dwelling units (e.g., motel, hotels), the operator shall report each building served as one subscriber if the operator has a single agreement for cable service with the units' proprietor, landlord, or owner on behalf of the residents or occupants of the structure. If the operator does not serve any type of multiple dwelling unit, residential or commercial, or any hotel or motel, a "zero" or a "N/A" (for "not applicable") must be reported in the appropriate space on the statement of account form.

(C) A cable operator shall on its Statement of Account separately report, line by line, for both single and multiple dwelling unit buildings, the number of subscribers served, gross receipts for the sale of each tier containing broadcast programming, any revenue derived from non-broadcast tier(s) of services if such purchase is required to obtain tiers of services with broadcast signals, and fees for any other type of equipment or device necessary to receive broadcast signals that is supplied by the cable operator. Information regarding multiple dwelling units shall not be left blank.

* * * * *

(4) * * *

(iv) A designation as to whether that primary transmitter is a "network station," an "independent station," or a "noncommercial educational station."

* * * * *

(k) *Royalty fee payment.* (1) All royalty fees, including supplemental royalty fees, must be paid by a single electronic funds transfer (EFT), and must be received in the

designated bank by the filing deadline for the relevant accounting period. Cable systems must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * *

(1) * *

(1) To amend or request a refund relating to a Statement of Account for an accounting period that includes dates prior to five years from submission of the form, please contact the Licensing Division for instructions.

* * * *

(4) * *

(iv) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT. No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * *

(vii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will

affirmatively send the royalty refund to the cable system owner named in the Statement of Account.

* * * * *

(5) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the cable statutory license occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the FEDERAL REGISTER, in effect on the first business day after the close of the filing deadline for that accounting period. Cable operators wishing to obtain the interest rate for a specific accounting period may do so by consulting the FEDERAL REGISTER for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(6) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

* * * * *

4. Amend 201.28 by:

- a. Revising paragraph (h)(1).
- b. Revising paragraph (j)(3)(v).
- c. Adding paragraph (j)(3)(viii)
- d. Adding paragraphs (j)(4) and (j)(5).

The revisions and additions read as follows:

§ 201.28 Statement of Account for digital audio recording devices or media.

* * * * *

(h) * * *

(1) All royalty fees, including supplemental royalty fee payments, must be paid by a single electronic funds transfer (EFT), and must be received in the designated bank by the filing deadline for the relevant accounting period. Remitters must provide specific information as part of the EFT and as part of the remittance advice, as listed in the instructions for the Statement of Account form.

* * * * *

(j) * * *

(3) * * *

(v) All requests for correction or refunds must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved, paid by EFT.

No request will be processed until the appropriate filing fees are received, and no supplemental royalty fee will be deposited until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

* * * * *

(viii) A refund payment in the amount of fifty dollars (\$50.00) or less will not be refunded unless specifically requested before the statement of account is closed, at which point any excess payment will be treated as part of the royalty fee. A request for a refund payment in an amount of over fifty dollars (\$50.00) is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will affirmatively send the royalty refund to the manufacturing or importing party named in the Statement of Account.

(4) Interest on late payments or underpayments. Royalty fee payments submitted as a result of late or amended filings shall include interest. Interest shall begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the digital audio recording obligation occurring within that accounting period. The accrual period shall end on the date the payment submitted by a remitter is received by the Copyright Office. The interest rate applicable to a specific accounting period beginning with the 1992/2 period shall be the Current Value of Funds Rate, as established by section 8025.40 of the Treasury Financial Manual and published in the FEDERAL REGISTER, in effect on the first business day after the close of the filing deadline for that accounting period. Manufacturers or importing parties wishing to obtain the interest rate for a specific accounting period may do so by consulting the FEDERAL REGISTER for the applicable Current Value of Funds Rate, or by consulting the Copyright Office website. Interest is not required to be paid on any royalty underpayment or late payment from a particular accounting period if the interest charge is less than or equal to five dollars (\$5.00).

(5) A statement of account shall be considered closed in cases where a licensee fails to reply within ninety days to the request for further information from the Copyright Office or, in the case of subsequent correspondence that may be necessary, ninety days from the date of the last correspondence from the Office.

Sarang V. Damle,
General Counsel and
Associate Register of Copyrights

[BILLING CODE 1410-30-P]

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